

ALJ/KHY/jt2

PROPOSED DECISION

Agenda ID #14281 (Rev. 1)

Adjudicatory

10/22/2015 Item #8

Decision **PROPOSED DECISION OF ALJ HYMES** (Mailed 9/10/15)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pasadena Avenue Monterey Road Committee,

Complainant,

vs.

Los Angeles County Metropolitan Transportation
Authority, Los Angeles to Pasadena Metro Blue
Line Construction Authority, and City of South
Pasadena,

Defendants.

Case 06-10-015
(Filed October 10, 2006)

**DECISION ADDRESSING JURISDICTION ISSUES AND DISMISSING
COMPLAINT WITH PREJUDICE**

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DECISION ADDRESSING JURISDICTION ISSUES AND DISMISSING COMPLAINT WITH PREJUDICE**Summary**

This decision dismisses, with prejudice, the complaint filed by the Pasadena Avenue Monterey Road Committee (Committee) against the Los Angeles County Metropolitan Transportation Authority (Transportation Authority), the Los Angeles to Pasadena Metro Blue Line Construction Authority (Construction Authority), and the City of South Pasadena (City) (jointly, Defendants).

The Committee alleges that the Transportation Authority, the Construction Authority, and the City have failed to carry out terms of a settlement agreement (Settlement) approved in Decision 05-02-032, as modified by Decision 05-09-040, requiring (a) construction of additional sound walls; (b) construction of clear Plexiglas sound wall extensions; (c) construction of additional sound insulation; (d) construction of privacy screens; (e) reconstruction of Mission Street and Meridian Avenue crossing; and (f) construction of Glendon Way crossing. Furthermore, the Complainant alleges that final sound tests need to be performed and shared.

This decision first determines that the Commission has the jurisdiction to address the following aspects of the Settlement: (a) bells at all crossings in the City; (b) the sounding of the “quacker” horn at all crossings in the City of South Pasadena; (c) Plexiglas extensions, which would be near crossings; and (d) any crossing design. Of these aspects of the Settlement, this decision determines that the defendants in this case have complied with Section 5.b.2 of the Settlement regarding clear Plexiglas sound wall extensions and Section 5.b.7

and Section 5.b.8 of the Settlement regarding railroad crossings, as indicated by an October 29, 2013 Report of Completed Changes.

The complaint is, therefore, dismissed with prejudice and this proceeding is closed.

1. Procedural Background of C.06-10-015

On October 10, 2006, the Pasadena Avenue Monterey Road Committee (Committee or Complainant) filed a complaint against the Los Angeles County Metropolitan Transportation Authority (Transportation Authority), the Los Angeles to Pasadena Metro Blue Line Construction Authority¹ (Construction Authority), and the City of South Pasadena (City) (jointly, Defendants). The Complainant alleges that the Defendants have not carried out the terms of a settlement agreement approved in Decision (D.) 05-02-032, and subsequently modified by D.05-09-040. More specifically, the Complainant alleges that several steps set forth in Section 5 of the Settlement have not been taken. The Complainant also alleges that results of noise tests required by D.05-02-032 have not been provided.

In response to the complaint, the Transportation Authority asserts that there are only two issues in this proceeding: 1) whether the Defendants failed to comply with D.05-02-032 and D.05-09-040; and 2) whether the Commission should dictate the timing or manner of the measures in the Settlement. Furthermore, both the Transportation Authority and the Construction Authority contend that the Commission lacks jurisdiction over some or all of the subject matter in the complaint.

¹ Now known as the Metro Gold Line Foothill Extension Construction Authority.

In the January 27, 2007 Ruling and Scoping Memo, the assigned Commissioner ruled that formal proceedings would be stayed pending the submission of follow up reports scheduled for April 2007. Following those reports, the assigned Administrative Law Judges issued several successive Rulings directing the filing of status reports. Over the course of this proceeding, the parties filed several status reports and one set of briefs regarding jurisdictional issues.

On July 31, 2014, the assigned Administrative Law Judge issued a Ruling summarizing the steps previously taken in this proceeding, providing the next steps, and requesting parties to respond to a series of questions regarding evidentiary hearings and the record of this proceeding.² The Ruling noted that in the 2013 status reports, 1) the Construction Authority reported that it had completed all of its requirements as set forth in the Settlement; and 2) the City reported that it had completed all but one of its measures from the Settlement -- the Glendon-El Centro reconfiguration project, which it anticipated to complete by the end of September, 2013.

The July 31, 2014 Ruling described four proposed remaining issues in the proceeding:

1. Jurisdiction: Whether the Commission has jurisdiction over the entirety of this proceeding.
2. Sound Walls and Plexiglas Sound Wall Extensions at Intersections: Whether these elements were required to have been installed; if they were required to be installed, whether they were installed; and if they have not been installed, what is the reason?

² Administrative Law Judge's Ruling Requesting Comments, July 31, 2014.

3. Surplus Revenues: Whether the Construction Authority developed a detailed report of the surplus revenues that could be used to lower noise levels along Phase One of the Gold Line and whether that report has been provided to all parties.
4. Sound Levels: What is the current sound level and is it in compliance with the Settlement?

Parties were asked to respond to the following three questions:

1. Please comment on the four issues indicated as the remaining issues in this proceeding. Are there any reasons that any of these issues should not be pursued? Are there any other issues from the scoping memo that should be included and why?
2. Does the record in this case need to be refreshed regarding the issue of jurisdiction or are the briefs from October 2007 sufficient?
3. Are there facts in dispute that need to be addressed in evidentiary hearings? What are these facts?

The Committee, the City, and, jointly, the Transportation Authority and the Construction Authority all filed comments to the Ruling in September 2014. The Committee, the City and the Transportation Authority each filed replies to the comments, also in September 2014.

As directed by the Administrative Law Judge, the City also filed a copy of the City's April 29, 2013 Request for Authorization to alter the Highway-Rail Crossing Pursuant to General Order (GO) 88-B, the Commission's September 3, 2013 authorization letter for that grade crossing in response to the GO 88-B request, and the Commission's October 29, 2013 Report of Completed Changes at Rail Crossings relating to that request

2. D.05-02-032 and D.05-09-040

D.05-02-032 adopted a settlement between the City, the Transportation Authority and the Construction Authority and granted, in part, an application of the Committee to allow the bells on crossing gate arms at designated crossings to

be silenced once the gate arms were descended. D.05-02-032 noted that the evaluation of the settlement was based on the limited nature of the three applications involved in the proceeding: 1) Application (A.) 03-01-013 requesting the elimination of horn soundings in the City; 2) A.03-07-049 requesting the silencing of bells at all crossings in the City; and 3) A.03-01-013 and A.03-07-050 requesting the imposition of a 20 mile per hour (mph) speed limit on trains in the City. Hence, the decision focused solely on bells, horns, other noise reducing measures and crossing design.

In addition to approving the Settlement, Ordering Paragraph 2 of D.05-02-032 required the Construction Authority to install noise shrouds on the bells at all crossings in the City and ensure that all bells were installed at a level of 75 to 80 dBA.³ D.05-02-032, Ordering Paragraph 3, required that no later than 75 days from the date of the decision, the Construction Authority must provide to Commission staff, the City, the Transportation Authority and the Committee sound test results demonstrating compliance with Ordering Paragraph 2.

D.05-09-040 approved a modification of D.05-02-032 requested by the City, the Construction Authority, the Transportation Authority, and the Committee. The modification replaced Ordering Paragraph 2 with a revised requirement regarding noise shrouds and testing of the bells at all crossings in the City. Specifically, Ordering Paragraph 2 was modified to require that noise shrouds be placed on all crossing bells in the City to ensure that each bell sounds at a level of 75.0 to 79.0 dBA when tested in accordance with the guidelines of the American Railway Engineering and Maintenance of Way Association. D.05-09-040

³ Sound intensity is measured in decibels. The A-weighted decibel (dBA) measure takes into account the sensitivity of human hearing.

required the Construction Company to comply with Ordering Paragraph 2 of D.05-02-032 no later than 30 days from the issuance of D.05-09-040.

3. Discussion

3.1. Remaining Issues

As discussed below, there are only two issues to be determined in this case: 1) Whether the Commission has jurisdiction over the entirety of this proceeding; and 2) For those issues where the Commission claims jurisdiction, have the Defendants complied with related aspects of the settlement.

The July 31, 2014 Ruling asked parties to comment on the remaining issues of the proceeding including the issue of jurisdiction and whether the record needs to be refreshed on the jurisdiction aspect. In response to the July Ruling, the Complainant contends that, in addition to the four issues provided in the July Ruling (*see Table 1*), the Commission should also consider whether additional sound and vibration measures should be required of the Defendants. The Defendants state that the issue of jurisdiction should be resolved based on the present record but that the other three issues need no further resolution. All parties claimed that the briefs filed in October 2007 regarding the issues of jurisdiction are sufficient for determining these issues.⁴

⁴ Pasadena Avenue Monterey Road Committee Comments on Administrative Law Judge's Ruling Requesting Comments, September 4, 2014, at 6 and Joint Response of Los Angeles County Metropolitan Transportation Authority and Metro Gold Line Foothill Extension Construction Authority to Administrative Law Judge's Ruling, September 5, 2014, at 24.

<p style="text-align: center;">Table 1</p> <p style="text-align: center;">List of Remaining Issues as Listed in the July 2015 Ruling</p>
<p>1. Whether the Commission has jurisdiction over the entirety of this proceeding?</p>
<p>2. Whether Sound Walls and Plexiglas Sound Wall Extensions at Intersections were required to have been installed; if they were required to be installed, whether they were installed; and if they have not been installed, what is the reason?</p>
<p>3. Whether the Construction Authority developed a detailed report of the surplus revenues that could be used to lower noise levels along Phase One of the Gold Line and whether that report has been provided to all parties.</p>
<p>4. What is the current sound level and is it in compliance with the agreement?</p>

In order to determine the remaining issues of the case, the issue of jurisdiction must first be addressed.

3.1.1. Jurisdiction Issue

As further described below, the Commission has jurisdiction to address the following aspects of the settlement: 1) bells at all crossings in the City, (Settlement, Section 5.b.5 and Section 5.b.6, as adopted in D.05-02-032 and modified in D.05-09-040); 2) the sounding of the “quacker” horn at all crossings in the City (Settlement, Section 5.a.1 as adopted in D.05-02-032); 3) Plexiglas extensions, which would be near crossings, (Settlement, Section 5.b.2); and 4) any crossing design (Settlement, Section 5.b.7 and Section 5.b.8).

Pursuant to the October 4, 2007 Administrative Law Judge Ruling, parties filed opening briefs on October 15, 2007, and reply briefs on October 23, 2007, addressing the question of jurisdiction. The July 31, 2015 Ruling asked parties if

the record was sufficient to address the issue of jurisdiction. All parties agreed that the briefs filed in 2007 could sufficiently address the issue of jurisdiction.⁵

First, we begin with an overview of the Settlement. The Settlement among the City, the Construction Authority and the Transportation Authority commits the settling parties to makes certain improvements to warning devices at the at-grade crossings in the City and to taking measures to reduce noise from the operations of light rail vehicles on the Transportation Authority's Gold Line in the City.

In D.05-02-032, the Commission explicitly stated that the settlement would only be evaluated in light of the three applications filed by the Committee and the limited nature of those requests. A.03-01-013 requested the elimination of horn soundings in the City; A.03-07-049 requested the silencing of bells at all crossings in the City; and A.03-01-013 and A.03-07-050 requested the imposition of a speed limit of 20 mph on Gold Line trains in the City. Therefore, this decision also addresses the jurisdictional issues solely related to these aspects of the Settlement.

The Construction Authority and Transportation Authority both contend that the Commission lacks the jurisdiction to require that additional sound testing be performed to determine if certain mitigation measures meet the environmental criteria, based on two arguments: 1) the Commission lacks subject matter jurisdiction over sound issues related to the operation of passenger light rail systems and 2) the Commission did not assume jurisdiction

⁵ See Joint Response of the Transportation Authority and Construction Authority to Administrative Law Judge's Ruling, September 5, 2014 at 24, and The Committee Comments on Administrative Law Judge's Ruling, September 4, 2014 at 6.

over sound walls, the Plexiglas sound wall extensions, or the additional sound installation when it adopted the Settlement and it cannot assume to do so now. Both the Committee and the City argue that the Commission has broader jurisdiction pursuant to the California Constitution and Public Utilities Code Section 701.

We turn to Public Utilities Code Section 778, which states that the Commission *“shall adopt rules and regulations...relating to safety appliances and procedures for rail transit services operated at grade and in vehicular traffic. The rules and regulations shall include, but not be limited to, provisions on grade crossing protection devices, headways, and maximum operating speeds with respect to the speed and volume of vehicular traffic within which the transit service is operated.”*

Pursuant to Section 778, the Commission has subject matter jurisdiction over all safety aspects and procedures for rail service operated at grade and in vehicular traffic. As was the case in D.05-02-032, we find that safety aspects include bells at the crossings in the City, the sounding of the “quacker” horn at all crossings in the City, as well as the crossing design. Thus, we conclude that Section 778 gives the Commission jurisdiction over issues regarding these same safety aspects.

Public Utilities Code Section 1202 states that “the Commission has the exclusive power to determine and prescribe the manner...and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad...” Furthermore, in D.05-02-032, the Commission clearly stated that the Plexiglas extensions, *which would be near crossings,*

(emphasis added) are specified to be subject to Commission approval.⁶ Although the Construction Authority and the Transportation Authority contend that the Commission did not assume jurisdiction over the Plexiglas sound wall extensions,⁷ they go on to state that the Commission made the crossings, crossing bells and the Plexiglas sound wall extensions subject to the approval of the Commission.⁸ We confirm that the Commission did, indeed, assume jurisdiction over the Plexiglas sound wall extensions in D.05-02-032. Hence, we conclude that the Commission has subject matter jurisdiction over the Plexiglas extensions near crossings.

We agree with the Construction Authority and the Transportation Authority that the Commission did not assume jurisdiction over the sound walls or the additional sound insulation when adopting the settlement in D.05-02-032. The Commission specifically noted that other noise reduction measures agreed to in the settlement do not directly address the applications' requests for relief with respect to bells, horns, or speed limits (the subject of the three applications). The Commission explained that the Construction Authority agreed to provide additional noise reduction measures, i.e. mechanical barriers, but pointed solely to the Plexiglas extensions as specified to be subject to Commission approval. By not listing either sound walls or the additional sound insulation, the Commission did not include an intention to require approval of these other matters.

The Committee and the City contend that the Commission has broader jurisdiction, citing Public Utilities Code 309.7. We agree that Public Utilities

⁶ D.05-02-032 at 14.

⁷ Opening Brief of Construction Authority and Transportation Authority, October 15, 2007 at 8.

⁸ *Id.* at 10.

Code Section 309.7 establishes that the division of the Commission responsible for consumer protection and safety⁹ shall be responsible for investigation of the operations of public mass transit guideways and for enforcing state and federal laws relating to the transportation of persons by rail. Furthermore, this same division shall advise the commission on all matters relating to rail safety.

However, as further described below, we are not persuaded by the arguments provided by the Committee and the City that, in this particular case, the Commission's jurisdiction extends beyond what was indicated in D.05-02-032. The Committee contends that the Commission has jurisdiction over the entire settlement pursuant to Rule 12 of the Commission's Rules of Practice and Procedure. We reiterate that in D.05-02-032, the Commission stated that the settlement would only be evaluated in light of the three applications then before the Commission and the limited nature of those requests.

The Committee also argues that Public Utilities Code Section 309.5 requires the Commission to consider the interests of residents and small commercial customers in all rate design matters. The Committee misreads Section 309.5; Section 309.5 describes the responsibilities of the Office of Ratepayer Advocates, not the responsibilities of the Commission. Finally, the Committee argues that excessive noise is a health and safety issue, and the Commission has the jurisdiction to "have the Defendants show evidence that the mitigation meets the threshold"¹⁰ pursuant to the safety and enforcement of California Environmental Quality Act (CEQA) requirements of Commission

⁹ The Commission division responsible for consumer protection and safety is now referred to as the Safety and Enforcement Division.

¹⁰ Committee Opening Brief at 5.

Rule 2.4. We agree that the Commission requires applications to comply with CEQA rules. However, we note that CEQA alone cannot expand an agency's jurisdiction.¹¹ Moreover, the Committee does not present any arguments indicating CEQA non-compliance nor does it provide any arguments indicating non-compliance with any specific state or federal statute.

The City claims that the power and authority of the Commission is quite broad, pointing to both the California Constitution, Article XII, Section 6¹² and Public Utilities Code Sections 216(a)¹³ and 701. The City concludes that the Constitutional and legislative grants of jurisdiction to regulate and oversee the operations of transportation companies such as the Construction Authority are plenary and comprehensive.¹⁴ While, we agree that the Commission does hold broad regulatory authority, the Construction Authority and the Transportation Authority both point out that statute and the courts have limited that authority in respect to this case by not explicitly conferring¹⁵ such jurisdiction on the Commission. Relying upon *Santa Clara Valley Transportation Authority v. Public Utilities Commission* (2004),¹⁶ the Construction Authority and Transportation Authority contend that the Legislature has conferred no

¹¹ California Public Resource Code Section 21004.

¹² The City quotes Article XII, Section 6 of the California Constitution as stating that the Commission has the power to "fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony," and numerous other acts. *See City Opening Brief at 7.*

¹³ The City quotes Section 216(a) as stating that "Common carriers are included in the definition of 'public utility' and as such are 'subject to the jurisdiction, control and regulation of the commission.'" *See City Opening Brief at 7.*

¹⁴ *City Opening Brief at 7.*

¹⁵ *Construction Authority and Transportation Authority reply brief, October 23, 2007 at 7-8.*

¹⁶ 124 Cal.App.4th 346.

jurisdiction on the Commission regarding the general levels of sounds emissions apart from the performance of audible warning devices employed in the vicinity of street/rail crossings. We reiterate that our jurisdiction in this case focuses on the areas of rail crossings.

Hence, this decision concludes that the Commission has jurisdiction over the following sections of the Settlement: Section 5.a.1 as adopted in D.05-02-032; Section 5.b.2, 5.b.5, 5.b.6, 5.b.7 and Section 5.b.8 as adopted in D.05-02-032 and modified in D.05-09-040. Furthermore, Public Utilities Code Sections 2107, 2111, and 2113 provide the Commission with the jurisdiction to penalize any public utility, person, or corporation who violates any Commission order as a deterrent to ensure that the directives in all Commission decisions are followed.

3.1.2. Plexiglas Sound Wall Extensions at Intersections

The Commission finds that the Defendants have complied with Section 5.b.2 of the Settlement regarding clear Plexiglas sound wall extensions. As described below, the construction of stepped down masonry walls, agreed to by all parties including Commission staff, is a sufficient replacement for this requirement and according to an expert witness, should result in acceptable noise levels.

First, we restate the relevant requirements of the Settlement:

Section 5.b.2. Clear Plexiglas sound wall extensions that are required to meet Environmental Criteria to be provided from Project Funds, if the City agrees to maintain them and MTA and CPUC approve their use. Other extensions to be provided from City's Share of Surplus Revenues subject to above conditions.

There are several overlapping issues in this section of the Settlement:

a) whether the substitution of masonry walls for the clear Plexiglas sound wall extensions is reasonable; b) whether Section 5.b.2 requires post-construction

noise tests; c) what is meant by environmental criteria; and d) does the Commission consider this portion of the settlement to be complete.

The Transportation Authority and the Construction Authority state that in April 2007, it reported “serious problems with the use of Plexiglas for sound wall extensions.” Both state that at a September 2007 meeting of the settling parties and Commission rail safety staff, an alternative was agreed to by all parties; the alternative would extend to full height the existing “stepped-down” masonry sound walls at three crossings, in lieu of Plexiglas. The Construction Authority states that it reported the completion of this work in September 2008.¹⁷

In response to the Construction Authority’s September 2008 report, the Committee contends that new noise tests must be performed to ensure that the new sound walls correct the noise levels to meet the environmental criteria. In its recent filings, the Committee maintains that noise tests must be performed;¹⁸ but both the Transportation Authority and the Construction Authority argue that post construction noise tests are not required by the settlement.¹⁹

Section 5.b.2 requires “clear Plexiglas sound wall extensions that are required to meet Environmental Criteria.” As previously highlighted, the November 1, 2007 status report from the Transportation Authority and the Construction Authority reiterated serious problems with the clear Plexiglas sound wall extensions and that all parties of the proceeding and the Commission’s rail safety staff have agreed to use “stepped-down” masonry sound walls at the Orange Grove, Hope Street, and Fremont crossings. All

¹⁷ Transportation Authority and Construction Authority Comments at 12.

¹⁸ Committee Opening Comments at 5.

¹⁹ Transportation Authority and Construction Authority Joint Reply Comments at 2 – 7.

parties agreed that line-of-sight would not be compromised at these three locations.²⁰ In reply to this report, the Committee stated that it “has no objection to the extensions being built with solid material” but the “only consideration is the post-construction sound testing.”²¹ Because all parties have agreed to the revision, we find the substitution of stepped-down masonry walls in place of the clear Plexiglas sound wall extensions to be reasonable.

We now consider whether post-construction sound testing is required and if it is what the sound levels should be.

The Committee argues that pursuant to Section 5.b.2, the sound wall extensions are required to meet environmental criteria, which was defined as those project noise guidelines described in SEIR Addendum #3. The Committee also states that during the Limited Evidentiary Hearing held in A.03-01-013 et al., the noise level was defined at 75 dba LMAX. However, the Committee also argues that “this high level of noise was not agreed to by the Committee and violates State and Federal safe noise requirements.”²²

The Construction Authority and the Transportation Authority contend that “nowhere in the Settlement is it stated that sound testing or any other specific verification procedure is required upon completion of the agreed upon mitigation measures.”²³ The Construction Authority and Transportation Authority explain that the term, “current sound testing” used in Section 5.b.1 is a

²⁰ Construction Authority November 1, 2007 Status Report at 4.

²¹ Committee Comments on Final Status Report, November 5, 2007 at 4.

²² Committee Response to Construction Authority and Transit Authority Comments to Ruling, September 12, 2014 at 4.

²³ Opening Brief, October 2007 at 24.

reference to the sound testing performed by ATS Consulting, Inc., at the time the Settlement was executed. Furthermore, the Construction Authority and Transportation Authority state that Section 5.b reflect the parties' intention that additional sound walls, Plexiglas barriers...should be constructed in a manner that should be consistent with the original construction of the Gold Line project. Because the original sound walls were designed to provide levels of sound mitigation consistent with the Environmental criteria, so too would the additional sound walls provided for in the Settlement meet the same design requirements.²⁴ However, the Construction Authority and the Transportation Authority acknowledge that meeting the environmental criteria in this section of the agreement was never guaranteed; hence the provisions of the Settlement which provide for the Construction Authority to work with the City to develop a home sale/purchase program where environmental criteria cannot be met.²⁵

We reiterate that our review of Section 5.2.b of the Settlement focuses solely on the issue of the construction of the Plexiglas barriers. In D.05-02-032, the Commission states explicitly that the Construction Authority and Transportation Authority are required to comply and cannot veto the measures approved to with reduce bell noise, including the installation of noise shrouds and testing.²⁶ If the Commission had intended to require post-construction noise testing for the Plexiglas barriers referenced in Section 5.b.2, it could have adopted additional language in D.05-02-032 similar to that adopted in regards to the bell

²⁴ *Opening Briefs of Construction and Transportation Authority*, October 15, 2007 at 27.

²⁵ *Ibid.*

²⁶ D.05-02-032 at 11.

shrouds.²⁷ Thus, we find that there is nothing in the settlement nor in D.05-02-032 that explicitly requires post-construction sound testing in regards to the Plexiglas sound walls, or its replacement. Hence, we find that the Defendants have complied with Section 5.2.b of the Settlement by the completion of the construction of the stepped down masonry walls in lieu of the Plexiglas sound barriers

3.1.3. Surplus Revenues and Noise Levels

In D.05-02-032, the Commission stated that the Settlement contains a number of other provisions that address issues that are outside the parameters of the relief requested in these consolidated applications.²⁸ Specifically, D.05-02-032 noted that the parties had agreed that wheel lubricant devices and additional mechanical barriers would be provided to reduce the overall noise but these do not directly address the applications' requests.²⁹ Furthermore, while noting that the "Plexiglas extensions, which would be near crossings, are specified to be subject to Commission approval," D.05-02-032 does not specify any requirements regarding other sound wall extensions or the surplus revenues designated to fund the extensions. We find the issues of surplus revenues and noise levels (except those having to do with the noise shrouds as required by D.05-02-032) to be outside the scope of D.05-02-032 and therefore they cannot be issues out of compliance with the Commission adopted portions of the Settlement. Furthermore, the Commission considers the tasks in Section 5.b.2 that are

²⁷ See D.05-02-032 at 10-11.

²⁸ D.05-02-032 at 9.

²⁹ D.05-02-032 at 13-14.

relevant to D.05-02-032, to be complete. Thus, the issue of surplus revenues and noise levels are moot.

4. Need for Hearing

The Scoping Memo in this proceeding determined that an evidentiary hearing was required.

The Construction Authority and the Transportation Authority argue that because all measures required by Section 5.a and 5.b of the Settlement and within the scope of the complaint have been completed, there is no need for an evidentiary hearing.³⁰ The Committee contends that the following facts are in dispute:

- Failure to maintain one level of safety all along the Gold Line and Segmentation, which allows less protection for one resident than another over the same mass transit project.
- The Defendants are required to provide certified noise tests to show noise levels have been reduced to the level established in the Settlement Agreement even though they fail to meet acceptable Federal safe operational levels.
- The Defendants cannot afford to provide sound walls with sound absorbing materials nor sound wall extensions to each sidewalk as agreed to because they distributed project funds prematurely.
- The Gold Line corridor within the City of South Pasadena does not have the same safety and noise level protections as all Cities along the Gold Line right of way.³¹

We previously determined that the Commission has jurisdiction over the following sections of the Settlement: Section 5.a.1 as adopted in D.05-02-032;

³⁰ Construction Authority and Transportation Authority Comments at 25.

³¹ The Committee Opening Comments at 7-8.

Section 5.b.2, 5.b.5, 5.b.6, 5.b.7 and Section 5.b.8 as adopted in D.05-02-032 and modified in D.05-09-040, and we have found that the Defendants are in compliance with these sections, as adopted in D.05-02-032 and modified in D.05-09-040, hence, there can be no disputed issues of material facts. We find that no hearing is required

5. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were received.

6. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Kelly A. Hymes is the assigned Administrative Law Judge in this proceeding

Findings of Fact

1. Safety aspects include bells at the crossings in the City, the sounding of the "quacker" horn at all crossings in the City, as well as the crossing design.
2. The Commission assumed jurisdiction over the Plexiglas sound wall extensions in D.05-02-032.
3. The Commission did not assume jurisdiction over the sound walls or the additional sound insulation when adopting the Settlement in D.05-02-032.
4. In D.05-02-032, the Commission stated that the Settlement would only be evaluated in light of the three applications then before the Commission and the limited nature of those requests.
5. The Committee misreads Section 309.5; Section 309.5 describes the responsibilities of the Office of Ratepayer Advocates, not the responsibilities of the Commission.

6. The Committee does not present any arguments indicating CEQA non-compliance nor does it provide any arguments indicating non-compliance with any specific state or federal statute.

7. The November 1, 2007 status report from the Transportation Authority and the Construction Authority reiterated serious problems with the clear Plexiglas sound wall extensions.

8. The November 1, 2007 status report stated that all parties of the proceeding and the Commission's rail safety staff have agreed to use "stepped-down" masonry sound walls at the Orange Grove, Hope Street, and Fremont crossings.

9. The November 1, 2007 status report stated that all parties agreed that line-of-sight would not be compromised at these three locations.

10. The Committee has no objection to the extensions being built with solid material but the "only consideration is the post-construction sound testing."

11. Our review of Section 5.2.b of the Settlement focuses solely on the issue of the construction of the Plexiglas barriers.

12. In D.05-02-032, the Commission states explicitly that the Construction Authority and Transportation Authority are required to comply and cannot veto the measures approved to reduce bell noise, including the installation of noise shrouds and testing.

13. If the Commission intended to require post-construction noise testing for the Plexiglas barriers referenced in Section 5.b.2, it could have adopted additional language in D.05-02-032 similar to that adopted in regards to the bell shrouds.

14. There is nothing in the Settlement nor in D.05-02-032 that explicitly requires post-construction sound testing in regards to the Plexiglas sound walls, or its replacement.

15. The Defendants have complied with Section 5.2.b of the Settlement by the completion of the construction of the stepped down masonry walls in lieu of the Plexiglas sound barriers.

16. The settlement agreement contains other provisions that address issues that are outside the parameters of the relief requested in the consolidated applications in A.03-01-013, et al.

17. D.05-02-032 does not specify any requirements regarding other sound wall extensions or the surplus revenues designated to fund the extensions.

18. The issues of surplus revenues and noise levels (except those having to do with the noise shrouds as required by D.05-02-032) are outside the scope of D.05-02-032.

19. Issues outside the scope of D.05-02-032 cannot be issues out of compliance with the Commission-adopted portions of the Settlement.

20. The tasks in Section 5.b.2 that are relevant to D.05-02-032 are complete.

21. The issues of surplus revenues and noise levels are moot.

Conclusions of Law

1. Pursuant to Public Utilities Code Section 778, the Commission has subject matter jurisdiction over all safety aspects and procedures for rail service operated at grade and in vehicular traffic.

2. Public Utilities Code Section 1202 states that the Commission has the exclusive power to determine and prescribe the manner...and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad..."

3. The Commission has jurisdiction to address the following aspects of the settlement: 1) bells at all crossings in the City, (Settlement, Section 5.b.5 and Section 5.b.6, as adopted in D.05-02-032 and modified in D.05-09-040); 2) the

sounding of the “quacker” horn at all crossings in the City (Settlement, Section 5.a.1 as adopted in D.05-02-032); 3) Plexiglas extensions, which would be near crossings, (Settlement, Section 5.b.2); and 4) any crossing design (Settlement, Section 5.b.7 and Section 5.b.8).

4. Public Utilities Code Section 309.7 establishes that the division responsible for consumer protection and safety shall be responsible for investigation of the operations of public mass transit guideways and for enforcing state and federal laws relating to the transportation of persons by rail.

5. An evidentiary hearing is not required.

O R D E R

IT IS ORDERED that:

1. The complaint filed by the Pasadena Avenue Monterey Road Committee is dismissed with prejudice.

2. Complaint 06-10-015 is closed.

This order is effective today.

Dated _____, at Sacramento, California.